

Before the
FEDERAL COMMUNICATIONS COMMISSION
 Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
 OFFICE OF THE SECRETARY

In the Matter of)

Second Memorandum Opinion)
 And Order, Released 4/8/02)

PR Docket No. 92-257

In the Matter of)

Applications of)
 Warren C. Havens)
 For New Automated Maritime)
 Telecommunications Systems)
 Dismissed Per)
 Second Memorandum Opinion)
 And Order, PR Docket No. 92-257)

File Nos.

Group A1:

853032-035 (Guadalupe River),
 853036-037 (Lake Mojave),
 853038-042, 044-046, 855043
 (Brazos River),
 853057-58 (South Platte River),
 853059-060 (Provo River),
 853070-072 (Truckee River),
 853175-176 (Upper Chattahoochee),
 853190-193 (Upper Rio Grande),
 853252-258 (Catawba River)
 853460-461 (Hawaiian Islands),

Group A2:

853562-569 (Missouri RBSNP),
 853570-576, -578-581 (MCKARNS)

Group B:

53611 (MCKARNS),
 853615 (South Platte River),
 853667-668 (Owens River),
 853669-674 (Kings River),
 853675-676 (Highland Lakes),
 853677 (Mt. Desert Island - Arcadia)

To: The Commission

OPPOSITION TO SUPPLEMENTED PETITION FOR RECONSIDERATION

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ORIGINAL

Mobex Communications, Inc. and its subsidiary, Mobex Network Services, LLC¹ (collectively, Mobex) hereby file their Opposition to the purported Errata to the Petition for Reconsideration filed with the Commission on May 13, 2002, by Warren C. Havens (Havens). In support of its position, Mobex shows the following.

On May 8, 2002, Havens filed a Petition for Reconsideration (Havens's Petition) in the above captioned matters. On May 13, 2002, Havens filed a purported Errata to his Petition (Havens's Supplement). On May 15, 2002, Mobex filed its opposition to Havens's Petition. Mobex will not reiterate its position concerning Havens's Petition, but herein will confine itself to Havens's Supplement. Mobex incorporates herein by reference the positions expressed in its May 15 opposition.

Although dated May 8, 2002, Havens's Supplement was received by the Commission on May 13, 2002. Havens's above captioned applications were dismissed by the Wireless Telecommunications Bureau on April 9, 2002. Section 1.106(f) of the Commission's Rules provides that "the petition for reconsideration and any supplement thereto shall be filed within 30 days from the date of public notice of the final Commission action, as that date is defined in §1.4(b)," 47 C.F.R. §1.106(f). Section 1.429(d) of the Commission's Rules provides that a "petition for reconsideration and any supplement thereto shall be filed within 30 days from the date of public notice of such action, as that date is defined in §1.4(b)," 47 C.F.R. §1.429(d).

¹ The name of Regionet Wireless License, LLC has been changed to Mobex Network Services, LLC.

Accordingly, Havens's Supplement was not timely filed and, pursuant to 47 U.S.C. §405(a), cannot be considered by the Commission.

The purpose of an erratum is to correct minor errors to existing text, not to add entirely new arguments. Although denominated as an Errata, Havens's filing was clearly an untimely supplement to his Petition. In an erratum, a person might correct typographical errors, such as the boldface "B" in the title on page 7 of Havens's Supplement, or might correct an obviously erroneously reference, such as appears in the first line of page 5 of Havens's Supplement. Havens, however, supplemented his petition with entirely new arguments, inserted at pages 5, and at 16-17. Havens also added to his conclusion a paragraph based on his new arguments.

Havens's Supplement did not include a certificate of service stating that a copy of the Supplement had been served on Mobex. Pursuant to Section 1.47(g), the Commission cannot act on Havens's Supplement in the absence of the required certificate of service.

Havens's Supplement did not comply with Section 1.52 of the Commission's Rules. Section 1.52 provides that "a party who is not represented by an attorney shall sign," 47 C.F.R. §1.52, a pleading such as Havens's Supplement. Havens's Supplement was not signed manually. Therefore, the Commission should dismiss the filing.

Mobex believes that the Commission will dismiss Havens's Supplement for any of the foregoing reasons. However, in an abundance of caution, Mobex will respond briefly to Havens's new arguments.

Havens appears to argue at page 16 of his Supplement that, merely because the cutoff period had not yet run against some Mobex applications, the Mobex applications were not mutually exclusive to Havens's applications. That Commission froze the filing of further applications against certain Mobex applications did not change the fact that Mobex's applications became mutually exclusive to Havens's upon their filing. Those applications remained in a state of mutual exclusivity until dismissed by the Commission.

Havens's whining about the amount of money which he expended in preparing his applications was disingenuous. In Amendment of the Commission's Rules Concerning Maritime Communications, 13 FCC Rcd 19853 (1998), the Commission informed applicants and potential applicants for AMTS licenses that "mutually exclusive applications for high seas and AMTS public coast spectrum cannot be resolved until competitive bidding procedures are adopted for those services, and that such applications may ultimately be dismissed," 13 FCC Rcd at 19856. The earliest of the above captioned Havens applications which can be found on the Universal Licensing System data base was filed on February 16, 2000. Therefore, Havens was on notice

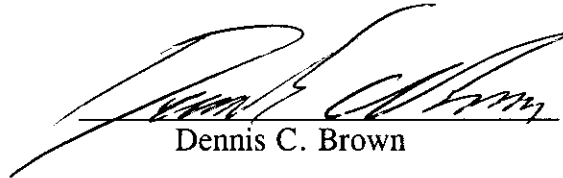
at the time of the filing of his applications that mutually exclusive applications might be dismissed, and any risk that he took in filing his applications was fully informed.

The Commission determined that the public interest would be better served by moving directly to geographic area licensing and not complicating the landscape by granting further applications for site by site stations. Havens's assertion that "the total MHz-Pops involved in [his] Applications is a very small percentage of all AMTS MHz-Pops" contains a strong argument against the grant of any of the above captioned applications. A geographic area licensee must provide interference protection to an incumbent station. The grant of additional incumbent stations would increase the number of instances in which a geographic area licensee would have to design its large system to protect the incumbent. The Commission should not permit a geographic area licensee to be "pecked to death by goslings".

Conclusion

For all the foregoing reasons, Mobex respectfully requests that Havens's Supplement be dismissed or denied.

Respectfully submitted,
MOBEX COMMUNICATIONS, INC.
MOBEX NETWORK SERVICES, LLC



Dennis C. Brown

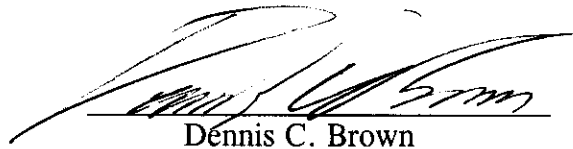
126/B North Bedford Street
Arlington, Virginia 22201
703/525-9630

Dated: May 17, 2002

CERTIFICATE OF SERVICE

I hereby certify that on this seventeenth day of May, 2002, I served a copy of the foregoing Opposition to Supplemented Petition for Reconsideration on the following person by placing a copy in the United States Mail, first class postage prepaid.

Warren C. Havens
2509 Stuart Street
Berkeley, California 94705

A handwritten signature in black ink, appearing to read "Dennis C. Brown", is written over a horizontal line.

Dennis C. Brown